

**2-52A. Class II Administrative Penalty: Initiation of Action; Public Notice; Consultation with State; Negotiation and Signing Consent Agreements; and Assessing Penalties****1200 TN 350 2-52A****1. AUTHORITY.** Pursuant to Section 309(g) and 311 of the Clean Water Act, the authority to:

- a. Make findings of fact; propose penalty to be assessed; issue, amend, or withdraw Class II administrative complaints;
- b. Provide, or cause to be provided, public notice of proposed assessment and provide commentors with copies of orders entered on consent or on default;
- c. Consult with states, as required;
- d. Sign consent agreements between the agency and the party against whom a Class II penalty is proposed to be assessed;
- e. Issue final orders assessing Class II penalties where no hearing is requested by the respondent or pursuant to a consent agreement; and
- f. Decide petitions by commentors to set aside final orders entered without a hearing and provide copies and/or notice of the decision.

**2. TO WHOM DELEGATED.**

- a. The authorities in 1.a., 1.b., 1.c., and 1.d. are delegated to the directors, Environmental Assessment and Innovation Division (EAID), Water Protection Division (WPD), Hazardous Site Cleanup Division (HSCD), and Office of Enforcement, Compliance and Environmental Justice (OECEJ).
- b. The authorities in 1.b. and 1.c. are delegated to the staffs of EAID, WPD, HSCD, and OECEJ.
- c. The authority to issue final consent orders under 1.e. is delegated to the regional judicial officer.
- d. The authority in 1.f. ~~and the authority to issue consent orders under 1.e. are~~ is reserved for the regional administrator.

**3. LIMITATIONS.**

- a. The delegates ~~RA~~ may exercise the above authorities only for those cases initiated by Region III.

- b. The director and staff of EAID may use these authorities only under Section 309(g) to implement Sections 308 and 404.
- c. The director and staff of WPD may use these authorities only under Section 309(g) to implement Sections 301, 302, 306, 307, 308, 318, 402, and 405.
- d. The director and staff of HSCD may use these authorities only under Sections 301, 308 and 311.
- e. The OECEJ delegates may exercise these authorities only in multi-media cases.
- f. The OECEJ delegates must consult with the EAID, HSCD or WPD delegates before exercising these authorities.
- g. The delegates must obtain the advance concurrence of the Regional Counsel prior to exercising the authorities in 1.a or 1.d.

#### **4. REDELEGATION AUTHORITY.**

- a. The authorities in 1.a through 1.d may be redelegated to the associate division director level.
- b. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.

#### **5. ADDITIONAL REFERENCES.**

- a. Section 309(g) and 311 of CWA.
- b. Chapter 1, Delegations 1-37 and 1-38 entitled "Hearings" and "Adjudicatory Proceedings".
- c. 40 CFR Part 22.

**6. SUPERSESSION.** Delegations Manual, CWA, Regional Delegation 2-52-A. Class II Administrative Penalty: Initiation of Action; Public Notice; Consultation with State; Negotiation and Signing Consent Agreements; and Assessing Penalties, 1200 TN RIII-164 (September 1, 2005)

Date: \_\_\_\_\_

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Cecil Rodrigues  
Acting Regional Administrator